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## RECENT CASES.

## SALES.

*Vendor and Purchaser—Contract—Interpretation.*—*Stewart v. Arendt*, 37 N. Y. Supp. 684. When in a contract there is a statement that the consideration for a sale of lands is a certain sum of money, and later from definite and particular terms showing the method of payment it appears that the consideration was a greater sum, the latter statement will prevail.

*Sales—Action for Deceit—Principal and Agent.*—*West Florida Land Co. v. Studebaker*, 19 Southern Reporter, 176 (Fla.). This was an action for fraud and deceit in the sale of lands. The court held that an action at law could be maintained for fraud of this sort, that principals are liable *civiliter* to third parties for the deceit of their agents when committed in the course of the principals' business, and that proof of other frauds of the same character committed by the same parties at approximately the same time was admissible to show the motive for the fraud in question.

*Sale by Sample—Evidence—Value of Goods.*—*Eiseman et al. v. Heine et al.*, 37 N. Y. Sup. 861. In an action for breach of contract of sale, the acknowledgment of agent that an order was received and that an attempt was made on his part to fill it will be admitted as evidence to show existence of contract. When the sale was made by sample the injured party will be allowed to estimate his loss by showing value of goods, according to quality claimed by him to be represented by the sample.

*Sale—Written Notice by Vendee—Warranty.*—*J. F. Seibling & Co., v. Newton*, 43 N. E. Rep. 151 (Ind.). In an action for the price of a machine sold with warranty on a contract requiring immediate written notice to vendor if the terms of warranty were not satisfied, it was held that as the plaintiffs' agent was present at the trial of the machine and, failing to make it do good work, told the vendee to return it, the written notice was waived.

*Sale—When Title Passes—Attachment.*—*Gates Iron Works v. Cohen*, 43 Pac. Rep. 667 (Col.). Plaintiff agreed to furnish a concentrating mill to defendant who promised to pay for it if on being tested it proved capable of doing the required work. The mill was erected on a foundation of solid masonry upon defendant's

land and in a building owned by defendant, but before it had been fully tested a creditor of defendant levied upon it and the land upon which it stood. Held, that title to the mill never having passed to defendant, such creditor acquired no interest in it.

*Specific Performance by Part Owner—Sale by Agent.*—*Cochran v. Blount et al.*, 16 Supreme Court Rep. 454. L, a part owner of a tract of land, placed the property in the hands of an agent for sale. The agent made a contract of sale which was approved by L and by some of the part owners. The other owners refused to sanction it and thereupon L withdrew his approval. The purchaser then brought suit against L to obtain specific performance. Held, that a decree of specific performance could not be granted unless it were shown that L held himself out to the agent as full owner or as authorized to dispose of the shares of the others.

#### PARTNERSHIP.

*Partnership—When Exists.*—*State Bank of Luskton v. O. S. Kelley Co.*, 66 N. W. Rep. 619 (Neb.). Where two farmers purchased a threshing machine, paying for the same by joint and several notes and jointly used the machine in threshing grain for others, it was held that the evidence warrants the conclusion of joint ownership rather than partnership.

*Partnership—What Constitutes.*—*Stratton v. O'Conner et al.*, 34 S. W. Rep. 158 (Texas). Cattle were furnished by defendant to another at a fixed valuation upon an agreement that the latter should care for and keep them for four years when they should be sold, their cost repaid to defendant and the remaining profits or loss, if any, should be shared equally. Held, that the arrangement constituted a partnership and defendant was liable for the indebtedness incurred by his partner in keeping the cattle.

*Partnership—Order of Supersedeas—Contempt of Court.*—*Silliman et al. v. Whitmer et al.*, 34 Atl. Rep. 56 (Penn.). A partner who is served with a supersedeas order staying operations which are in charge of another partner, is guilty of contempt of court if he fails to transmit the order to the partner in charge.

*Partnership—Accounting by Survivor.*—*Little v. Caldwell*, 44 Pac. Rep. 340 (Cal.). Two law partners made a written contract to conduct certain litigation for fifteen per cent of the amount recovered, which was afterwards modified by parol to the extent that the clients should defray part of the expense of the suit.